IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRL.A.No. 1888 of 2003()

CC.155/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

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APPELLANT: COMPLAINANT:

D.SASIKUMAR,
NELLIKAVIL VEEDU, MANGARAM MURI, KONNI VILLAGE.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: ACCUSED & STATE:

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1. MOHAMMED EKUBAL,
LAKSHAMVEEDU COLONY, VATTAKAVANKAL,
KONNI, KONNI P.O.

2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI.C.M.KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.1888 OF 2003

Dated this the 4th day of July, 2007.

JUDGMENT

This appeal is filed against the order passed in C.C.No.155/1998 on the file of the Judicial Magistrate of First Class-II, Pathanamthitta. The order impugned has been seen passed under Section 256(1) of the Code of Criminal Procedure. The appeal has been admitted by this Court and notice has been served on the 1st respondent. There is no appearance for the 1st respondent. This Court heard the learned counsel appearing for the petitioner/appellant and perused the records. As per the impugned order, the 1st respondent has been acquitted only on the ground of absence of the petitioner/appellant. The order does not show that the petitioner/appellant should have been present in the court on the posting date and it was necessitated to pass such an order only on the absence of the petitioner/appellant. It is also not discernible from the order that the trial court had applied its mind before passing the impugned order as held by this Court in the judgments reported in **G.F.S. Chit & Loans (P) Ltd V. Rajesh** 2006(3) KLT 825) and **Don Bosco v. Partech Computers Ltd**. (2005(2) (KLT 1003).

In the above circumstances, it is only proper for this Court to set aside the order and remand the case back to the trial court. Accordingly, the order under challenge is set aside and the matter is remanded back to the trial court for a fresh consideration. The trial court is directed to take up the matter afresh at the stage at which the impugned order has been passed on issuing a fresh notice to the 1st respondent. The appellant shall appear before the lower court on 18.8.2007.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.1888 OF 2003

JUDGMENT

4th July, 2007.